

Reestablishment of Assistant City Manager Position

December 4, 2015

The Honorable Mayor Ellison and
Members of the City Commission:

I've been struggling with two problems for some time which may have a common solution.

Royal Oak has not had an assistant city manager since Tom Trice retired in 2005. Few cities of our size and complexity do not have a designated second in command. Actually most cities less than half our size have one.

We do have an assistant to the city manager position but that is not the same thing. An "assistant to" has no line authority over the department heads and isn't in a credible position to take over in my absence. I have on rare occasions had someone else set in my place at the commission meeting but no one else has taken on the full responsibilities of the manager in any of my absences. My solution has been to simply not be completely absent. Modern technology has made it possible for me to perform much of my duties remotely even while on vacation and during a recovery from surgery last year.

Our assistant city manager position was eliminated for financial reasons and we continue to face financial pressures that prevent me from asking you to let me add another person to my staff even though it is needed.

We are also facing leadership crises in one of our best managed departments. The Royal Oak Police Department is without peer in Southeast Michigan, perhaps in the entire state. It hasn't always been this way. In fact, it wasn't all that long ago, the ROPD was known as a troubled department. This change came about due to a lot of factors but most importantly due to management that instilled discipline, accountability and values that were previously lacking. For that I have to give primary credit to two individuals, former Chief Ted Quisenberry and, most importantly, current Chief Corrigan O'Donohue. Neither did it by himself. Both developed strong leaders among their deputies, lieutenants and sergeants and built a department we can all be very proud of.

On October 1, we lost one of those leaders when Deputy Chief Thomas Goad retired. Near the end of October, we learned Deputy Chief Gordon Young has been named Chief of Police in River Falls, Wisconsin and will be leaving Royal Oak shortly. Losing both deputy chiefs, in such a short period of time, is a major talent drain that will be deeply felt in the ROPD. It can easily become much worse. Police Chief Corrigan O'Donohue is also eligible to retire.

The retirement system for police officers and firefighters was designed to retire police officers and firefighters at a relatively young age, before they lose the physical ability to perform their jobs well. Many people may argue the system goes too far in this regard and I wouldn't disagree, especially in regard to command staff. However, the system is what it is and it can only be changed through the collective bargaining process. Whether we like it or not, the chief can retire, if he chooses to do so, and there is a huge financial incentive for him to do so. His

current salary pays him only about \$10,000 more per year than the pension he is eligible to receive. He could very easily take the pension and retiree health care he has already earned from Royal Oak, find another job elsewhere and be far better off financially. Chief O'Donohue is an exceptional chief and I'm sure he would have little difficulty finding another chief's position or another position in law enforcement or a related industry.

Chief O'Donohue does not want to retire. He enjoys his job and there is a great deal of prestige associated with being the head of one of the best police departments in the country. However, he does have a responsibility to his family.

We need to find a way to keep Chief O'Donohue. I propose to do that in two ways, while also solving my other problem.

First, I want to promote him to Assistant City Manager/Chief of Police with a pay raise to \$120,000 per year. This accomplishes five things:

1. It is a significant salary increase but it is nowhere near enough, by itself, to make staying as financially attractive as retiring.
2. Chief O'Donohue is interested in expanding his horizons beyond the police department. He is currently enrolled in a MPA program and is genuinely interested in the possibility of eventually becoming a city manager. This provides him with an entry into general management.
3. This provides me with a very talented manager that I can use to assist me in other areas besides police and it also provides a second in command who will have full authority when I am not present.
4. It may provide the city with a strong internal candidate to replace me when I choose to retire or when the commission chooses to retire me. I will be turning 64 in two weeks and I anticipate retiring in two years
5. Because he will continue to serve as police chief, we are not adding an employee and the budgetary impact is small. In fact, it will save money if the commission approves all of my recommendations and you examine the total impact on the city and on the retirement system.

Second, because the promotion and raise alone will not be enough to offset the financial advantages of retiring, I propose to establish a Key Employee Incentive Program (KEIP) which will make staying in the job much more attractive. Essentially, it freezes his pension benefit at the level it would be if he retired now, puts that amount into a new "KEIP" account which he receives when he does finally retire, and allows him to continue working. The KEIP program will be a six year program with full vesting not occurring for three years.

While this offers significant financial advantages to the chief, the total cost to the city and the retirement system is actually significantly less than it would be if he were to retire now. If Chief O'Donohue were to retire immediately, the pension system would be paying approximately \$90,000 per year in pension benefits. The city would be paying for his retiree health care and we would be paying the full salary, healthcare and other benefits for a new police chief who would also be accruing future pension benefits. Under this plan, the pension system pays no more than it would if he retired today. He doesn't accrue additional time credits toward his

pension nor does his final average compensation ever get increased because of his new salary. The public safety fund and general fund actually pay less because we are only paying health care for one employee instead of for a retiree and a new chief and the frozen pension means we do not keep increasing our pension liability.

Most importantly, it provides a means by which we can retain an exceptional chief of police at a time when losing him would create a leadership vacuum in the department. We do have a number of fine lieutenants ready to move up but we cannot afford to lose our top three command officers almost simultaneously. That would be a disaster and that is what will happen if we do not do something extraordinary to retain Chief O'Donohue.

Outside counsel has put together a document that will establish this plan. It needs actuarial review and retirement board approval before it will come to the city commission for approval. Counsel has also put together the attached contract between the city and Chief O'Donohue which I am submitting for your approval (Attachment 1).

I strongly recommend the commission approve the following resolution:

Whereas, the commission recognizes the exceptional leadership ability of Chief of Police Corrigan O'Donohue; and

Whereas, the commission also recognizes the leadership crises that will occur if all three of our top police command officers retire at essentially the same time; and

Whereas, the City of Royal Oak needs an assistant city manager;

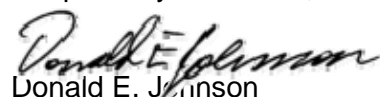
Now therefore be it resolved, the city manager's recommendation to re-establish the assistant city manager position is approved; and

Be it further resolved, the city manager's promotion of Chief of Police Corrigan O'Donohue to serve as Assistant City Manager/Chief of Police is authorized; and

Be it further resolved, the employment agreement with Chief of Police Corrigan O'Donohue is approved and the mayor, clerk and city manager are authorized to execute it on behalf of the City of Royal Oak; and

Be it finally resolved, Chief of Police Corrigan O'Donohue shall be eligible to participate in a Key Employee Incentive Plan (KEIP) and the documents formally establishing that plan shall be brought to the city commission for approval after an actuarial analysis is completed and the plan is approved by the retirement board.

Respectfully submitted,



Donald E. Johnson
City Manager

Attachment 1

Assistant City Manager/Chief of Police Agreement of Employment and Benefit Coordination

This agreement made and entered into this ____ day of December, 2015 between the City of Royal Oak (hereinafter referred to as “city”) and Corrigan O’Donohue (hereinafter referred to as “employee”);

Whereas, the parties recognize the Employee currently serves in the position of chief of the Royal Oak Police Department;

Whereas, pursuant to the City of Royal Oak City Charter Chapter 3 Section 20 the city commission has the power to appoint an assistant city manager;

Whereas, the city manager has recommended and the city commission has determined it is in the interest of the City to assign the duties and responsibilities of serving as the assistant city manager to the Employee, as well as, continuing his duties as the chief of police;

Whereas, the parties recognize the value of a written contract so as to reduce all of the terms of their agreement to writing;

Now, therefore, in consideration of the mutual covenants and promises contained herein, the parties agree as follows:

1. **Scope of Agreement:** It is contemplated and expressly agreed that this agreement shall set forth the terms and conditions for the additional duties and responsibilities that are being assigned to the Employee upon his acceptance as assistant city manager/chief of police. All benefits and conditions of employment not referenced in this agreement are reserved to the benefit package currently being provided to the employee in his capacity as chief of police.
2. **Salary & Commencement Date:** The City agrees to hire the Employee commencing upon the execution of this agreement and beginning December __, 2015, at an annual salary of one hundred and twenty thousand (\$120,000.00) dollars.
3. **Term:** The Parties acknowledge that this agreement shall be for a period of five (5) years upon acceptance by the city commission, unless terminated in accordance with this agreement. This agreement shall automatically renew for a one year period unless a termination notice is served upon the other party.

4. **Professional Qualifications:** The Employee agrees to devote full and adequate time and energies in the performance of the duties of the City's assistant city manager/chief of police as set forth in the job description developed by the city manager. The Employee also agrees to perform said duties as set forth in the statutes of the State of Michigan and such other related duties as the city manager may from time to time direct, and other duties related thereto.

5. **Benefits in Addition to Salary:** In addition to the salary as herein specified, the Employee shall be entitled to the following additional benefits.

A. The parties agree the employee shall be provided health care in accordance with this appointment as the chief of police for the City of Royal as is currently being provided and may otherwise change from time to time by the City in the executive department heads group.

B. **Time-Off:** The Employee shall be entitled each year to an allotment of paid time off which shall total thirty (30) days.

Paid time off shall be used for sick, vacation, or personal time. Each day will be the equivalent of one (8) eight-hour work day. Unused time off will not accumulate.

6. **Retention Program:** The City agrees that as a condition of employment he shall be provided retirement benefits as outlined in the KEIP.

7. **Termination:** Nothing shall prevent, limit or otherwise interfere with the city manager's ability to terminate the services of the Employee at any time, with or without cause, and for any or no reason notwithstanding any potential claim to the contrary.

In the event Employee voluntarily resigns his position with the City, then Employee shall give the City thirty (30) days notice in advance, unless the parties otherwise agree.

8. **Modification:** This agreement may be terminated, modified or extended by mutual agreement between said parties, but no modification or extension thereof shall be valid unless the same be in writing and signed by the parties.

9. **General Provisions:**

- A. This agreement shall continue in effect until terminated in accordance with the above.
- B. This agreement shall be binding upon and inure to the benefit of the heirs at law and executors of the estate of Employee, in the event of Employee's death during the term hereof, with respect to entitlement to salary or benefits due Employee at the time of his death.
- C. If any provisions, or any portion thereof, contained in this agreement are held unconstitutional, invalid or unenforceable, the remainder of this agreement shall not be affected and shall remain in full force and effect.
- D. The terms and conditions of this agreement shall take effect on the effective date of appointment.

10. **Dispute Resolution Exclusive Remedy:** The Employee agrees that any action or suit against the City arising out of his employment or termination, including, but not limited to claims arising under State or Federal Civil Rights Statutes, State or Federal Law state or federal civil rights statutes, state or federal law, or under this agreement, must be brought within 180 (one hundred eighty) days of the event giving rise to the claims or be forever barred. The Employee waives any limitation periods to the contrary. Further, the Employee agrees that any action or suit as described above shall be submitted to binding arbitration before the American Arbitration Association under the rules for resolution of employment disputes as his exclusive remedy and waives the right to pursue any action or suit in a court of law or in any administrative proceeding.

11. **Arbitration:** If a dispute arises concerning this agreement or Employee's employment with the City, such dispute can be resolved only through binding arbitration pursuant to the terms of this arbitration provision. Within one hundred eighty (180) days of the event or occurrence which gives rise to the dispute, either Employee or the City may file a demand for arbitration with the American Arbitration Association ("AAA"). Such arbitration shall be conducted in accordance with AAA's commercial arbitration rules (except as modified herein). Such arbitration shall be heard by a single Michigan arbitrator. The determination of the arbitrator shall be binding upon both the City and Employee. All expenses, costs, administrative filing fees and arbitrator's fees shall be shared equally by the City and Employee. The parties further agree that they will comply with

the terms of this arbitration provision and any award rendered by the arbitrator, and that a judgment of a Court having jurisdiction may be entered upon the award as long as the arbitrator does not exceed their authority or jurisdiction. This arbitration agreement specifically includes, but is not limited to, statutory claims of employment discrimination.

In Witness Whereof, the Employee has hereunto set his hand, and the City has caused these presents to be executed in its name and on its behalf, all as of the day and year first above written.

By: _____
Corrigan O'Donohue, Employee Date

By: _____
James Ellison, Mayor Date

By: _____
Donald Johnson, City Manager Date

By: _____
Melanie Halas, Clerk Date